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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of Sections 3(n) and 332 of) GN Docket No. 93-252
the Communications Act)
)
Regulatory Treatment of Mobile Services)

COMMENTS OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA")
submits this reply to the Further Notice of Proposed Rulemaking,
FCC 94-100, released on May 20, 1994.

NTCA is a national association of approximately 500 small
local exchange carriers ("LECs") providing telecommunications
services to interexchange carriers and subscribers throughout
rural America. Many of these LECs members provide reclassified
Commercial Mobile Radio services (CMRS) including cellular,
private and common carrier paging services, improved mobile
telephone services and others. The LECs are also interested in
providing Personal Communications Services (PCS) and are all
included in the Commission's definition of "rural telephone
companies," "small businesses" or other designated entities
eligible to bid on the 30 and 10 MHz "entrepreneur blocks"
provided for in the Commission's recently announced decision in
In the Matter of Section 309(j) of the Communications Act-

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Competitive Bidding (PP Docket No. 93-253).¹ NTCA's members are opposed to the spectrum aggregation cap the Commission proposes. NTCA agrees with the overwhelming majority of commenters that opposed the cap in their initial comments. It believes a cap will defeat the Congressional objective that spectrum-based services be rapidly developed and deployed for the benefit of the public, including those residing in rural areas.² That objective can best be achieved without the imposition of an artificial cap that applies broadly to all CMRS licensees with holdings in the market or geographic area yet to be defined for purposes of the cap. Instead of achieving the Congressional objective, the Commission's proposal will deprive customers of services they need and want, especially in sparsely populated areas where fewer providers are likely to exist. There is no record to justify imposing an artificial aggregation limit of spectrum in these areas or across the services that constitute CMRS.³

NTCA agrees with Southwestern Bell's position that the Commission's proposal to limit spectrum aggregation for CMRS is inconsistent with its determination in this proceeding that CMRS

¹ FCC News Release of June 29, 1994 in that docket.

² 47 U.S.C. § 309 (j)(3)(A).

³ The E.F. Johnson Company, a designer and manufacturer of land mobile radio systems, for example, supports, a cap on the mere assertion that "a cap will foster ownership opportunities for small local providers." Comments at 19.

is not a single market.⁴ In addition, the Commission and many parties commenting in this proceeding recognize that the services provided by licensees are continually evolving. An inflexible aggregation limit across services will frustrate that evolution and deprive the public of the benefits of innovation.

The imposition of an overall limit superimposed upon the limitations already included for cellular and broadband PCS may also force providers and the public to incur unnecessary and burdensome transactional costs associated with divestment and regulatory measures related to the aggregation limits. The Commission already has in place a range of complicated attribution and overlap rules that will require compliance of PCS and cellular licensees. The imposition of a new set of aggregation, attribution and overlap rules will certainly impose new and costly burdens on wireless providers. These burdens are likely to fall more harshly on "entrepreneurs" and small businesses like NTCA's membership. NTCA urges the Commission to abandon the overall aggregation limit and avoid the imposition of yet another costly burden on the small business and rural telcos must likely to provide the range of services required by rural areas.

NTCA agrees that the Commission's interest in preventing anti-competitive behavior is a legitimate one. That interest, however, is protected by rules that govern the two CMRS services that involve the greatest spectrum blocks: these include a 40 MHz

⁴ Comments of Southwestern Bell at 5.

cap for broadband PCS and the cellular eligibility rules which generally limit cellular licensees to 10 MHz broadband PCS licenses. The Commission's interest is also protected by the Antitrust laws. It is more appropriate and beneficial to the public to rely on these existing laws and rules than to impose caps that will likely prevent potential entrants as well as incumbents from obtaining or renewing CMRS licenses for a variety of wireless services that are still emerging and are offered in differing geographic service area configurations that have no readily apparent reference to a single product market.

CONCLUSION

NTCA requests that the Commission abandon the CMRS aggregation cap.

Respectfully submitted,

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